ESTATES TAIL IN THE UNITED STATES.—Estates tail, along with the methods of barring them by fine and common recovery, were introduced into this country by the colonists,[1] and with the exception of a few states[2] have been recognized at one time practically everywhere. Their existence here was short lived, however, the very doctrine of entails being out of harmony with conditions in this country.[3] As early as 1776, Virginia had a statute aimed at their abolition;[4] and they have now been abolished, or greatly curtailed, in the vast majority of the states. But in dealing with these estates and endeavoring to remove the restraints on alienation involved, legislation and adjudication in the various jurisdictions have produced different results.

Leaving out of account such states as South Carolina where estates tail have never been recognized,[5] the states can be divided into four classes with reference to their attitude on this subject. In the first place, some of the states have abolished the fee tail by making it a fee simple in the first taker.[6] At the other extreme are quite a number of states in which, the statutes being silent, the fee tail would logically seem to exist as at common law. But it seems safe to assume that in most of these states the fee tail would not be recognized by the courts.[7] In a third group of states, estates tail are made life estates in the first donee[8] with remainder in fee simple either to his children[9] or to the person to whom at common law the estate would pass at his death.[10]

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[1] 4 Kent, Comm., *14.

[2] In South Carolina, Ohio and Mississippi, the statute *de donis* has never been in force, and a conveyance to A and the heirs of his body gives A a fee conditional as it was at common law. Mattison *v.* Mattison (1902) 65 S. C. 345; Pierson *v.* Lane (1882) 60 Iowa 60; see Jordan *v.* Roach (1856) 32 Miss. 481, 617; 4 Kent, Comm., *17.

[3] See Pierson *v.* Lane, *supra.*

[4] 4 Kent, Comm., *14.

[5] Note 2, *supra.*

[6] N. Y. Real Prop. Law, § 32; Nellis *v.* Nellis (1885) 99 N. Y. 505, 511; Pa. Act of April 27, 1855 § 1, P. L. 368; Kimmel *v.* Shaffer (1908) 219 Pa. 375; Howell's Mich. Stat., § 10625; Ky. Stat. 1909, § 2343; Davis *v.* Davis (1901) 23 Ky. L. Rep. 1132; Burns Ann. Ind. Stat. 1914, § 3994; Chamberlain *v.* Runkle (1901) 28 Ind. App. 599; Code of Ga. 1911, § 3661; Ewing *v.* Shropshire (1888) 80 Ga. 374; Cal. Civ. Code, § 763. In some of these states, a remainder in fee on what at common law would be a fee tail, is valid as a contingent limitation on a fee and takes effect on the death of the first taker without issue. N. Y. Real Prop. Law, § 32; Howell's Mich. Stat., § 10626; Cal. Civ. Code, § 764; see Adams *v.* Merrill (1909) 45 Ind. App. 315, 323.

[7] See Stimson's American Statute Law, § 1313 (D); Pierson *v.* Lane, *supra.*

[8] N. J. Comp. Stat., p. 1921, § 11; Dowe's Case (1904) 68 N. J. Eq. 11; Ill. Stat. Ann., § 2237; Peterson *v.* Jackson (1902) 196 Ill. 40; Kirby's Ark. Dig., § 735; Rev. Stat. Colo. 1908, § 674; In Ohio and *semble* in Connecticut, the first taker has an estate for life "as tenant in tail". Ohio Gen. Code, § 8622; Pollock *v.* Speidel (1867) 17 Oh. St. 439; see Conn. Gen. Stat. 1902, § 4027; St. John *v.* Dann (1895) 66 Conn. 401, 407. In New Jersey the widow gets dower and the husband curtesy in the estate of the first taker. N. J. Comp. Stat., *supra.*

[9] N. J. Comp. Stat., *supra*; Ohio Gen. Code, *supra*; Conn. Gen. Stat., *supra.*

[10] Ill. Stat. Ann., *supra*; Rev. Stat. Colo., *supra*; Kirby's Ark. Dig., *supra.*

Finally, a few states have the fee tail still subsisting,[11] but permit the owner to convey the property in fee simple, usually by an ordinary deed.[12]

That the doctrine and learning of fee tail has not become obsolete in these last of jurisdictions is indicated by the recent case of *Hazzard* v. *Hazzard* (Del. 1915) 94 Atl. 905, where the question arose as to what estate passed to a purchaser at a sale on execution of a fee tail estate. It was held that under the Delaware statutes the purchaser acquired a fee simple estate. In others of the states where the estate tail still exists, the statutes provide that a purchaser on execution or other judicial sale shall acquire a fee simple.[13] In Delaware, however, in addition to the provision that a tenant in tail may alien in fee simple, the only statute bearing on the point is to the effect that in execution sales the grantee shall hold the premises for such estate as the debtor "might or could do at or before the taking thereof in execution."[14] The court read this last phrase, "for such estate as the debtor might or could convey." However we may differ with the court in the matter of a strict reading of the statute, it must be granted that their decision accords with the attitude of our courts generally toward the doctrine of entails with its resultant restraint on the alienability of estates.

SUNDAY LAWS AND THEIR EFFECT ON CONTRACTS.—The common law of England made no distinction between Sunday and secular days as to labor or the transaction of business. But in 1668 a statute[1] was enacted forbidding any person to exercise any worldly labor or business or work of their ordinary callings on the Lord's day, works of necessity and charity alone excepted.[2] This statute was taken over by the states as part of their common law[3] and was further strengthened by statutory enactments. It formed a nucleus around which there rapidly grew up a formidable body of Sunday prohibitions. The constitutionality of these statutes has frequently been attacked on the ground of restricting freedom of religious worship. This view, however, has repeatedly been denied by both state and Federal courts and the statutes

[11] *In re* Tillinghast (1903) 25 R. I. 338; Whittaker *v.* Whittaker (1868) 99 Mass. 364; Caulk's Lessee *v.* Caulk (1902) 19 Del. 528; see Me. Rev. Stat. 1903, p. 658, § 7.

[12] Mass. Rev. Laws 1902, p. 1226, § 24; R. I. Gen. Laws 1909, c. 252, § 14; Del. Rev. Code 1915, § 3235; Me. Rev. Stat. 1903, *supra*.

[13] Mass. Rev. Laws 1902, p. 1603, § 2; R. I. Gen. Laws 1909, c. 252, § 5; Me. Rev. Stat. 1903, p. 669, § 6.

[14] Del. Rev. Code 1915, § 4365.

[1] Stat. 29 Car. II, c. 7, § 1.

[2] The English courts in a large measure interpreted away this statute by holding that it applied only to the exercise of a man's regular vocation, King *v.* Whitnash (1827) 7 B. & C. 596; Drury *v.* Defontaine (1808) 1 Taunt. *131; Scarfe *v.* Morgan (1838) 4 M. & W. *270, or that it applied only to the lower classes, Queen *v.* Cleworth (1863) 4 B. & S. *927, or by some other evasion. Bloxsome *v.* Williams (1824) 1 C. & P. 294; Williams *v.* Paul (1830) 6 Bing. 653; but see Simpson *v.* Nicholls (1838) 3 M. & W. *240.

[3] See Crabtree *v.* Whiteselle (1885) 65 Tex. 111.